*Clause* 3.

Rao Bahadur C. V. ANANTAKRISHNA AYYAR :—" Mr. President, Sir, I have to move a few formal amendments. I move that in line 4 of clause 3 the figure '(15)' be inserted before the words 'the conditions.' The original section contained 14 clauses ; now that we are adding a 15th clause, this amendment is necessary."

The question was put to the House and carried; the amendment was made.

Rao Bahadur C. V. ANANTAKRISHNA AYYAR :—" I move, Sir, that in line 5 the comma after the word 'cash' may be omitted."

The hon. Dr. P. SUBBARAYAN :—" I second it."

The amendment was put to the House and carried.

4-15 p. m. The hon. the PRESIDENT :—" The question is clause (3) as amended do form part of the Bill."

The question was put and carried.

Rao Bahadur C. V. ANANTAKRISHNA AYYAR :—" After clause (3), add the following as a new clause :—

'4. The word " and " at the end of clause (13) of sub-section (*b*) of section 19 of the said Act shall be omitted, and the word " and " shall be inserted at the end of clause 14 of sub-section (*b*) of section 19 of the said Act.'

" This amendment is equally a drafting amendment.

" Formerly, there were only 14 clauses and at the end of clause (13) you had the word 'and'. Now that we have got the 15th clause, a formal amendment has been made to insert the word 'and' at the end of clause (14) instead of at the end of clause (13)."

Mr. C. B. COTTERELL :—" I second it, Sir."

The question was put and carried.

The hon. Mr. M. R. SETURATNAM AYYAR :—" I now move, Sir, that the Bill as amended by the House be passed into law."

The question was put and carried.



## VIII

### A BILL TO AMEND THE INDIAN FISHERIES ACT, 1897.

*The hon. Mr. M. R. SETURATNAM AYYAR :—" Mr. President, Sir, I beg

'*to present the report* of the Select Committee appointed to consider the Bill to amend the Indian Fisheries Act,* 1897, *in its application to the Presidency of Madras and move that the Bill as amended by the Select Committee be taken into consideration.*'

" I need not at this stage perhaps advert to the objects of the amendment. As will be seen from the Statement of Objects and Reasons, it is proposed to provide for the following three matters :—

(1) For empowering the Government to prohibit the destruction of fry or immature fish in waters where such a course is considered necessary ;

* Printed so Appendix XIV at pages 607-610 infra.

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(2) for empowering the Government to prohibit fishing without limit of time in public waters except under licence; and

(3) for enabling Government to recover fishery rentals as arrears of revenue under section 52 of the Madras Revenue Recovery Act of 1864.

"The Select Committee have examined the Bill and have suggested two amendments. One is to amend the proviso to section 8 of the main Act and the second is to introduce a proviso to sub-section 4 of section 6 of the principal Act. The Government have decided to accept these amendments with a small change in the form of the proviso suggested in clause 3. This amendment, as the hon. Advocate-General will explain, is only intended to indicate sufficiently clearly the procedure to be adopted for placing the rule before the Legislative Council for obtaining its vote. I now request that the Bill with the amendment be now taken into consideration."

The hon. Mr. S. MUTHIAH MUDALIYAR :—"I second it."

The question that the Bill as amended by the Select Committee be taken into consideration was put and carried.

The hon. the PRESIDENT :—"The question is that clauses 1 and 2 stand part of the Bill."

The question was put and carried.

*Clause* 3.

Rao Bahadur C. V. Anantakrishna Ayyar rose to move his amendment.

* Mr. J. A. SALDANHA :—"Sir, it is for consideration whether the amendment I have given notice of or the amendment of the Advocate-General is to be taken up first. My amendment is more comprehensive and I therefore suggest that it be taken up first."

* The hon. the PRESIDENT :—"It seems the Advocate-General's amendment is a drafting amendment. It is better to wait and see the fate of Mr. Saldanha's amendment."

* Mr. J. A. SALDANHA :—"I propose that the proviso to clause 3 which is proposed by Government should be as follows :—

'*Provided that the prohibition shall not extend to any fishery in the sea other than pearl fishery or chank fishery or to any fishery in a tidal river except by rule assented to by vote of the Legislative Council.*'

"In order to make my point clear, I shall try to elucidate it from my own minute of dissent which has been printed but which is not in the hands of many. The Bill originally as it stood sought powers for the local Government to modify the old provision in the Indian Fisheries Act which enabled them to prohibit fishing in any water for a period not exceeding two years. This meant that Government might parcel out any sea within a territorial distance of three miles. Here is the sea at Madras which they can parcel out into 100 pieces and give them out to a number of fishermen. That means that a large number of people will be under their control. They will have a lot of

these fishermen under their thumb. In navigable rivers which extend several miles you can imagine what such control means. Now, Sir, in England, in navigable waters Government is the owner of them, but that is subject to the right of the people. Even in India under the Land Encroachment Act of 1905, it is provided that the right of the Government is subject to other public rights, to all natural and easement rights of other landholders, and of the other customary rights of the people, subsisting then. The Indian law recognizes the principle of the English law. In the tidal river water this right is subject to the right of the fishermen. The rights of fishing by the people are customary rights. I pointed this out to the Select Committee. It was a shock to the hon. Minister that there could be any objection to the Bill. The committee saw the point of it and the meeting was adjourned with a view to give this point the consideration it deserved. So far as the seas are concerned, it is all right. But over tidal waters, Government could not have any control. Government could not lease them without the consent of the people. I am glad that in my dissent the present Minister of Excise, hon. Mr. Muthiah Mudaliyar supported me. I hope this will not be treated as a party matter, and will be recognized that it is a matter affecting the rights of the people. The amendment may require some verbal alteration but it can be done afterwards. I appeal to the House to accept my amendment. In the interests of the people this right should be fought for.

4-30 p.m. " This will be a tool in the hands of the politician to make unscrupulous use of. In the fishermen community there will be about 10,000 voters and they will be on the side of the powers-that-be. I think the catching or forcing of their votes is the motive behind this move. Their condition is one of great distress and we should not deprive them of what rights they now enjoy by placing this sort of power in the hands of the bureaucracy, never mind what sort of bureaucracy it is. This community is already under the control of the Department of Fisheries. It is entirely powerless. In this state of affairs if we bring them under the control of a licensing branch of some department of Government it will be a crushing blow to them. I hope in the name of the liberty of these people and for the sake of their economic condition the House will be kind enough to support my amendment."

* Mr. K. R. KARANT :—" Sir, I have great pleasure in seconding this motion. I do not wish to speak on the aspect of controlling their votes when democracy is introduced. I am speaking on another point. As things stand at present, both in the sea and also in the tidal rivers, these fishermen have been enjoying from time immemorial the right of fishing. Now we are giving in the hands of the Government this power without the consent of the Legislative Council. I see no difference between fisheries in the sea and fisheries in rivers. I therefore submit that in both cases any rule issued should receive the assent of the Legislative Council."

Diwan Bahadur R. N. AROGYASWAMI MUDALIYAR :—" Sir, the amendment relates to . . ."

* The hon. the PRESIDENT :—" The hon. Member will kindly resume his seat. The only difference between the amendment of the Advocate-General and that of Mr. Saldanha is the addition of the words ' or to any fishery in a tidal river ' at the end of the second sentence in the amendment of the Advocate-General. I think it will be for the convenience of the House to

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allow Mr. Saldanha to withdraw his amendment and ask the Advocate-General to move his amendment. Mr. Saldanha may then move his amendment for the addition of the words 'or to any fishery in a tidal river." When his amendment is disposed of, the House may take up the amendment of the Advocate-General. If once Mr. Saldanha's amendment is accepted, there will be difficulty as the wording is not satisfactory even by his own admission."

* Mr. J. A. SALDANHA :—"I accept your suggestion, Sir, and beg leave to withdraw my amendment."

The amendment was by leave withdrawn.

* Rao Bahadur C. V. ANANTAKRISHNA AYYAR :—"Mr. President, in clause 3 of the Bill the words—

'Provided that the prohibition shall not extend to sea fishery other than pearl fishery or chank fishery except by rule assented to by vote of the Legislative Council'

might, from the drafting point of view, be more correctly put in the way I have suggested. Mine is only a drafting amendment. These words have been taken from similar words used in the Cotton Transport Act as to how the proviso should be framed. The object is to get the assent of the House in respect of the rules that may be framed. So, I move that for the existing proviso read above in clause 3 of the Bill, the following shall be substituted :—

'Provided that no rule shall be made under this sub-section to prohibit sea fishery other than pearl fishery or chank fishery unless, after previous publication under sub-section (6) of this section, it has been laid in draft before the Legislative Council, and has been approved by a resolution of the Legislative Council either with or without modification or addition; but upon such approval being given the rule may be issued in the form in which it has been so approved.'

This is only a drafting amendment intended to carry out exactly the object which the select committee had in view."

The hon. Dr. P. SUBBARAYAN :—"I second it."

The hon. the PRESIDENT :—"The question is that for the existing proviso substitute the proviso read out by the Advocate-General."

* Mr. J. A. SALDANHA :—"Sir, I move that in line 2 *after* the words 'chank fishery' *insert* the words 'or to any fishery in a tidal river'."

* Diwan Bahadur R. N. AROGYASWAMI MUDALIYAR :—"I second the amendment of Mr. Saldanha. I looked into the question of tidal rivers in connection with the amending Bill and found to my surprise that such control as the Government are exercising at present in tidal waters is merely an accident. I found no authority for the Government to get control of these tidal waters, but somehow or other in a few cases the Government is exercising control. It is purely accidental. The money realized by the Government from these tidal waters is very small. I believe I am right in saying that only in Ganjam the district board is getting any money from the lease of tidal waters in the tidal rivers and in the backwaters

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called Thamparas. This, I believe, is only a solitary instance and as the money involved is small it is but right that the Government should make the procedure uniform throughout the province by foregoing the income from this source.

"The general practice in other countries as observed by the hon. Mover is to let alone these tidal rivers. I think it will be only fair if the Government accepts the amendment and agrees to drop the control now exercised only in one district. I believe there are no tidal waters in Tanjore where the Government is exercising control over the fisheries. In a matter of this kind it is difficult to say where a tidal river ends and the other begins. I think, Sir, the amendment of Mr. Saldanha is a reasonable one and ought to be accepted by the House."

*The hon. Mr. M. R. SETURATNAM AYYAR :—"Sir, the amendment proposed by Mr. Saldanha requires that any rule intended to prohibit fishing not only in the sea but also in tidal rivers should be placed before the Legislative Council for its vote. The Government have of course decided to agree to the proviso as introduced by the Select Committee requiring that no prohibition should extend to the sea fishery other than pearl fishery or chank fishery except with the consent of the Council. I regret that the amendment given notice of by Mr. Saldanha cannot be accepted by the Government. The procedure will be inconvenient when speedy action has to be taken and in the event of refusal the Government, and in some cases local bodies also, stand to lose a portion of their revenue. At present fisheries in many rivers down to their mouths, i e., even in tidal portions, are leased out and the revenues are credited to the Government or local body in cases where such revenues have been assigned to local bodies. No such right is exercised at present in respect of sea fishery which is open to unrestricted fishing by the public at large. The claim of the Government to the fisheries in rivers rests upon the right of the Government as trustees of the waterways in the country to possess and to assign the exclusive possession of them to any individual on payment of a revenue for them in the shape of fishery rent. The Government should therefore be in a position to exercise these powers unhampered. There need be no fear that the possession of this right will lead the Government to exercise their power in a case where private rights are found to exist either by prescription or by adverse possession. Every time a rule is proposed to be made under the sub-section to prohibit fishing, a full investigation will be made into the rights exercised by private bodies in respect of fisheries in public waters. The Government can be trusted to exercise the power with care and circumspection. I accept all amendments except the one with regard to tidal waters."

*Mr. S SATYAMURTI :—"Sir I have no objection to your ruling publicly that manuscript speeches are allowed in the case of Ministers. But, Sir, discussion becomes a farce if a responsible Minister reads out a note prepared in the office before he heard the arguments advanced in favour of an amendment in the House. I submit, Sir, if he were to sit still and not listen to the arguments or understand them and make out a case against them, but simply take up a file and read what the Secretary wrote in the office and say that the Government therefore regret (laughter)—that also is written there (renewed laughter) . . ."

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The hon. the PRESIDENT :—" The hon. Member Mr. Satyamurti is requested to resume his seat."

* The hon. Mr. M. R. SETURATNAM AYYAR :—" A word of personal explanation, Sir. I had discussion with almost all the hon. Members who gave notice of the amendments and I took down notes of their points for my reply. The Secretary did not prepare the note." 4-45 p.m.

Mr. S. SATYAMURTI :—" I am not concerned with that.'

* The hon. the PRESIDENT :—" We are not concerned with who prepared the note. The hon. Member is requested to confine his remarks to the merits of the amendment."

* Mr. S. SATYAMURTI :—" My complaint is that there is no reply by the Government after listening to the arguments coming from such a weighty source as the ex-Minister in charge of the department. It becomes almost a farce if the hon. the Minister were to come here with a set of arguments ready before we are able to place our arguments for the hon. Members of the Treasury Bench. Therefore I say that the amendment has not been replied to in the manner in which an amendment ought to be replied to. Now what is the amendment ? It is that the previous permission of this Council ought to be taken before the Government seek to regulate fisheries in tidal rivers. My hon. Friend says, as a responsible Minister, that Government can be trusted to do these things quite properly, and they ought to be unhampered in the discharge of their duties. May I ask 'are we in the Montagu-Chelmsford days, or are we living in the pre-Christian era, when the Government feel that any discussion in the Legislative Council was hampering the discretion of the executive ? Is that a new theory of Ministerial responsibility which the hon. Member for Trichinopoly is laying down for the benefit of the future generations ? If the Government think that they place certain rules before the House, it will be hampering the discretion of the Government, it will be insulting the House. I do not think any hon. Member can take that insult lying down. Is it even correct ? Has not this House the same sense of responsibility which the hon. the Minister claims for himself ?

" Secondly, he says with gusto that the Government can be expected to behave well. There is no greater bureaucrat who has been in the steel frame of India. He has crossed the floor recently and has in six months become a seasoned bureaucrat telling us that Government ought to be left unhampered.

" Seriously speaking, Mr. President, it seems to me that we are not met by arguments against our arguments, but are merely asked to accept the wisdom of the bureaucracy, and the hampering nature of the Council. Therefore I do earnestly appeal to every section to teach the Minister his place that he must either meet this House seriously, accept its wishes or at least answer arguments by counter-arguments. We cannot stand the nonsense any longer that he represents the last word in the gubernatorial wisdom. I ask the House to accept the amendment."

The hon. the PRESIDENT :—" The question is in the amendment of the hon. the Advocate-General in line (2) after 'chank fishery' *insert* 'or to any fishery in a tidal river.' "

The amendment was put to the House and declared lost.